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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THOMAS PATTON et al.,

Plaintiffs and Respondents,

v.

TYESHA MARIE MAUDE
BISHOP et al.,

Defendants and Appellants.

B286854

(Los Angeles County
Super. Ct. No. BC557319)

APPEAL from a judgment of the Superior Court of Los Angeles County, Michael P. Linfield, Judge. Affirmed.

Tyesha M. M. Bishop and Reggie L. Bishop, in pro. per., for Defendants and Appellants.

No appearance for Plaintiffs and Respondents.

Tyesha Marie Maude Bishop (Tyesha)¹ and Reggie Lyn Bishop, Sr. (Reggie, collectively the Bishops) appeal from a judgment in favor of Willie M. Phelps² entered after a court trial. The court found for Phelps on her cause of action for fraudulent transfer and in favor of the Bishops on Phelps' cause of action for elder abuse. The court awarded Phelps \$263,729.35 in compensatory damages, \$79,696.84 in prejudgment interest, and \$154,500 in punitive damages. Judgment was entered on November 20, 2017. The Bishops timely appealed. We affirm.

BACKGROUND

I. The Unlawful Detainer Action

Phelps was a tenant in an apartment building at 3305 Stocker Street in Los Angeles; Reggie was her landlord. In 2011, Reggie filed an unlawful detainer action against Phelps. On November 9, 2011, Phelps and Reggie executed an unlawful detainer stipulation and judgment. Phelps agreed to vacate the premises by November 30, 2011. Reggie agreed to pay Phelps relocation fees. (*Bishop v. Phelps*, Super. Ct. L. A. County, 2011, No. 11U11520.)

¹ For ease of reference and to avoid confusion, and intending no disrespect, we refer to the Bishops individually by their first names. (*Daniels v. Robbins* (2010) 182 Cal.App.4th 204, 210, fn. 2.)

² We granted the motion of Thomas and Audrey Patton to substitute in as successors in interest to Willie M. Phelps, who died during the pendency of this appeal.

II. The Wrongful Eviction Action

On February 2, 2012, Phelps sued Reggie for wrongful eviction from her rent-controlled apartment. A jury awarded Phelps \$154,500. With attorney fees and costs, judgment in the amount of \$263,729.35 was entered in Phelps' favor on March 14, 2014. (*Phelps v. Bishop*, Super. Ct. L. A. County, 2014, No. BC478175.)

Division Four of this court affirmed the judgment in its entirety. (*Phelps v. Bishop* (May 28, 2015, B252583 & B254891) [nonpub. opn.].) It found, inter alia, that the judgment in the unlawful detainer action did not bar Phelps's constructive eviction claim, and the evidence was sufficient to support the jury's finding that Reggie acted willfully.³

III. The Instant Action for Fraudulent Transfer and Elder Abuse

On September 11, 2014, Phelps filed this action for fraudulent transfer and elder abuse against the Bishops. Phelps alleged that on November 26, 2013, a week after the jury in the wrongful eviction action rendered its verdict in favor of Phelps, Reggie transferred the Stocker Street apartment building to Tyesha for no consideration in order to deprive Phelps of her ability to collect her wrongful eviction judgment. The removal transferred any attachable assets from Reggie's name. The elder abuse cause of action was similarly based on the fraudulent transfer of the apartment building; Phelps was at the time almost 80 years old.

³ The Bishops continue to challenge these findings in the instant appeal.

On December 4, 2014, Phelps obtained a preliminary injunction enjoining Tyesha from transferring the apartment building pending trial. Tyesha appealed; we affirmed. (*Phelps v. Bishop* (Jan. 8, 2016, B260734) [nonpub. opn.].) We held that because Tyesha failed to file opposition to Phelps' motion for a preliminary injunction, she was precluded from challenging it on appeal. (*Id.* at pp. 2-3.)

IV. The Probate Proceedings

While these proceedings were taking place, the Stocker Street apartment building was also the subject of probate proceedings involving the Gwendolyn R. Moore Trust, which had owned the apartment building. The court in those proceedings ordered confirmation of a settlement agreement. This order provided that two-thirds of the residue of the trust would be distributed to Reggie, and the remaining third would be distributed to Brenda and Fred Richards. We dismissed Reggie's appeal from the order (*Willis v. Page* (Feb. 28, 2012, B230638) [nonpub. opn.]).⁴ We explained that the parties in the probate proceedings mediated their disputes and signed a settlement agreement. Thereafter, Reggie objected to the order confirming the settlement agreement. By failing to object to the petition confirming the settlement agreement and accepting benefits under the agreement, Reggie could not appeal from the order. We dismissed the appeal and ordered Reggie to pay sanctions for frivolous appeal.

⁴ On our own motion, we take judicial notice of our records in the various proceedings. (Evid. Code, §§ 452, subd. (d), 459.)

On July 13, 2015—after the preliminary injunction issued in the instant case but prior to our opinion on appeal—the probate court quieted title to the apartment building in favor of the Gwendolyn R. Moore Trust of 2004. (*In re Gwendolyn R. Moore Trust* (Super. Ct. L. A. County, 2015, No. BP120811).) The court found that Reggie and trustee Nancy Willis conspired to defraud Brenda and Fred Richards by transferring the apartment building from the trust to Reggie without consideration, depriving Brenda and Fred Richards of their one-third interest in the property. The court cancelled the January 21, 2011 deed transferring the apartment building to Reggie.⁵

V. Trial and Judgment in this Case

Following the issuance of the remittitur in this case on March 9, 2016, the superior court proceedings crawled slowly toward trial. In May 2016, Phelps was forced to make a number of motions to compel discovery responses. Reggie responded with a notice of an automatic stay of the proceedings under section 362 of the Bankruptcy Code. This was his second bankruptcy case. Phelps filed a complaint for non-dischargeability in the bankruptcy proceedings. On May 18, 2017, Phelps notified the trial court that the automatic stay had been lifted.⁶

⁵ In connection with a February 8, 2016 appeal in the probate proceedings, we observed that at some point in these proceedings, Reggie was declared to be a vexatious litigant (Code Civ. Proc., § 391.7).

⁶ Another appeal in this case was dismissed as abandoned on March 23, 2017, based on Reggie’s failure to keep this court apprised of the progress of the bankruptcy proceedings. (*Phelps v. Bishop* (Mar. 23, 2017, B264995).)

On June 23, 2017, the Bishops filed an ex parte motion to dismiss the proceedings with prejudice on the ground they were “not in possession of the property, which is the subject hereof, and said property has been transferred to a Third Party by the Gwendolyn R. Moore Revocable Living Trust.” The Bishops noted that the probate court had denied Phelps’ motion for leave to intervene in the probate proceedings. The court there found “that Ms. Phelps has no interest in the instant litigation. Though Ms. Phelps is an individual creditor of . . . Reggie L. Bishop, Sr., she has no interest in the Trust or any Trust asset. Ms. Phelps may collect her judgment against Reggie L. Bishop, Sr.’s share of the trust when [the] same is determined and distributed, but cannot intervene in the Trust litigation prior to that time.”⁷

On July 14, 2017, the trial court granted Phelps’ motions to compel discovery responses and awarded sanctions against the Bishops.

Trial occurred on September 18, 2017. “Witnesses were sworn, testimony was taken, and exhibits were entered into evidence.” The trial court announced its decision at the conclusion of the trial. The court found in favor of Phelps on her cause of action for fraudulent transfer and in favor of the Bishops on the elder abuse cause of action. The court awarded Phelps judgment in the amount of \$497,926.19, consisting of \$263,729.35 in compensatory damages, \$79,696.84 in prejudgment interest, and \$154,500 in punitive damages. Phelps filed a memorandum

⁷ The Bishops also filed a notice of related case, identifying as a related case the bankruptcy proceeding in which the automatic stay had been lifted.

of costs on September 20. She also filed an application for the issuance of a writ of execution, possession or sale.

The trial court issued an order to show cause re entry of judgment. In response, on October 18, 2017, the Bishops filed a reply and indicated they intended to move to vacate the judgment on the ground of lack of subject matter jurisdiction; mistake, inadvertence, surprise, or excusable neglect (Code Civ. Proc., § 473); and that the property had been transferred to a third party by the Gwendolyn R. Moore Trust, and the Bishops believed Phelps had “been fully Compensated as a result of said Transfer.”

Judgment was entered on November 20, 2017. On November 22, the Bishops filed motions to vacate the judgment. They claimed Phelps was guilty of an abuse of process and malicious prosecution. Additionally, they were not in possession of title to the Stocker apartment building; it had been transferred to a third party and Phelps had been fully compensated as a result of the transfer. They claimed Phelps defrauded them by bringing the action. Finally, they claimed they were entitled to relief based on their attorney’s positive misconduct. The Bishops filed their notice of appeal on December 8, 2017.⁸

⁸ It appears from the case summary that the trial court denied the motions to vacate the judgment on January 11, 2018. No copy of the order denying the motions appears in the record.

DISCUSSION

I. Principles Governing Appellate Review

“ ‘Perhaps the most fundamental rule of appellate law is that the judgment [or order] challenged on appeal is presumed correct, and it is the appellant[s]’ burden to affirmatively demonstrate error.’ [Citation.]” (*Ruelas v. Superior Court* (2015) 235 Cal.App.4th 374, 383; accord, *In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) “ ‘To demonstrate error, appellant[s] must present meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error. [Citations.]’ [Citation.] ‘Mere suggestions of error without supporting argument or authority other than general abstract principles do not properly present grounds for appellate review.’ [Citation.] ‘Hence, conclusory claims of error will fail.’ [Citation.]” (*Multani v. Witkin & Neal* (2013) 215 Cal.App.4th 1428, 1457; accord, *Rojas v. Platinum Auto Group, Inc.* (2013) 212 Cal.App.4th 997, 1000, fn. 3.)

Additionally, the appellants’ brief must “[p]rovide a summary of the significant facts limited to matters in the record.” (Cal. Rules of Court, rule 8.204(a)(2)(C).) To the extent the Bishops have made reference to factual or procedural matters without record references, we will disregard such matters. (*Rybolt v. Riley* (2018) 20 Cal.App.5th 864, 868; *Harshad & Nasir Corp. v. Global Sign Systems, Inc.* (2017) 14 Cal.App.5th 523, 527, fn. 3.)

Finally, in the absence of a court reporter at trial court proceedings and the resulting absence of transcript of those proceedings, we will presume the correctness of the judgment. *Jameson v. Desta* (2018) 5 Cal.5th 594, 608-609.) “ ‘ “[I]f the

record is inadequate for meaningful review, the appellant defaults and the decision of the trial court should be affirmed.”’ [Citation.] ‘Consequently, [the appellant] has the burden of providing an adequate record. [Citation.] Failure to provide an adequate record on an issue requires that the issue be resolved against [the appellant].’ [Citation.]” (*Id.* at p. 609.)

Bearing these principles in mind, we turn to the Bishops’ four claims of error.

II. The Bishops Contend Phelps Has Engaged in Abuse of Process, Forum Shopping, and Malicious Prosecution

While the Bishops list a number of acts undertaken by Phelps which, the Bishops contend, constituted abuse of process, forum shopping, and malicious prosecution, they do not cite anything in the record to show that they raised these claims in the trial court. Nor do they cite any authority for the proposition that this contention can be raised for the first time on appeal.

“‘As a general rule an appellate court will consider only such points as were raised in the trial court, and this rule precludes a party from asserting, on appeal, claims to relief not asserted or asked for in the court below.’ [Citations.]” (*Cinnamon Square Shopping Center v. Meadowlark Enterprises* (1994) 24 Cal.App.4th 1837, 1844; accord, *In re Marriage of Olson* (1993) 14 Cal.App.4th 1, 15.) We therefore cannot consider the Bishops’ contention for the first time on appeal.

Moreover, the Bishops’ contention rests on faulty premises. For example, they assert that the probate court found that Tyesha did not commit fraud in accepting the Stocker Street apartment building from Reggie because it denied Brenda and

Fred Richards' motion for a preliminary injunction. The probate court made no such finding. It denied Brenda and Fred Richards' motions for a preliminary injunction and writ of possession because they had no pending litigation against Tyesha and failed to cite applicable authority.

The Bishops claim, without citation to authority (*Rybolt v. Riley, supra*, 20 Cal.App.5th at p. 868; *Multani v. Witkin & Neal, supra*, 215 Cal.App.4th at p. 1457), the trial court lacked jurisdiction to enter judgment because the probate court's ruling was res judicata as to the issues here. The order denying the motions by Brenda and Fred Richards is not res judicata. It was not a final judgment on the merits; it did not address an identical claim to those at issue in this case; and Phelps was not a party to the probate proceedings. (*Boeken v. Philip Morris USA, Inc.* (2010) 48 Cal.4th 788, 797.)

III. The Transfer of the Apartment Building to a Third Party

The Bishops contend that the transfer of the apartment building to a third party by the Gwendolyn R. Moore Trust resulted in Phelps being fully compensated. Without any citation to the record, the Bishops discuss an unlawful detainer action and the trustees of the Gwendolyn R. Moore Trust using the trust as their alter ego to fraudulently claim an ownership interest in the apartment building. The Bishops assert, again without any citation to the record, that Phelps "has been fully compensated for her claim(s), herein, by virtue of having been paid from the proceeds of [the transfer of the apartment building], by the Gwendolyn R. Moore . . . Trust to Sovereign Ventures, Inc." They further claim, without citation to the record or authority, that the

court has no way of determining whether the transfer was fraudulent as to Phelps; therefore, the Bishops argue, the court has no jurisdiction to grant the relief sought in these proceedings.

Again, in the absence of citations to the record or meaningful legal analysis supported by citations to authority, we reject the contention. (*Rybolt v. Riley, supra*, 20 Cal.App.5th at p. 868; *Multani v. Witkin & Neal, supra*, 215 Cal.App.4th at p. 1457.) Moreover, we find nothing in the record before us to support the Bishops' assertion that Phelps has been compensated for her claim through the probate proceedings.

What we know from the available records is that, in the probate proceedings, the court cancelled the January 21, 2011 deed transferring the Stocker Street apartment building to Reggie and quieted title to the property in the Gwendolyn R. Moore Trust of 2004. As the trial court here found in denying the Bishops' ex parte motion to dismiss the proceedings with prejudice on the ground they were not in possession of the apartment building, the probate court denied Phelps' motion for leave to intervene in the probate proceedings, finding that Phelps had no interest in the probate proceedings. While she was a creditor of Reggie's, she had "no interest in the Trust or any Trust asset." Thus, whatever ultimately occurred with respect to the apartment building, it did not negate Reggie's debt to Phelps arising from the wrongful eviction action.

To the extent the Bishops claim numerous improprieties occurred in the probate proceedings, those are not before us. Our jurisdiction is limited to the proceedings in the instant case, i.e., the fraudulent conveyance case. (*Canal-Randolph Anaheim, Inc. v. J.E. Wilkowski* (1980) 103 Cal.App.3d 282, 288, fn. 3.)

IV. The Bishops' Claim that Phelps Defrauded Them

In support of their claim that Phelps defrauded them, the Bishops cite various documents they submitted in support of their replies to the order to show cause re entry of judgment. In the absence of any indication that the claim of fraud and these documents were before the court at trial, we cannot consider them. (*Cinnamon Square Shopping Center v. Meadowlark Enterprises, supra*, 24 Cal.App.4th at p. 1844.)

Moreover, we note that many of the documents to which the Bishops refer were filed in other cases, i.e., the unlawful detainer and wrongful eviction actions, and the bankruptcy proceedings. The Bishops appear to be challenging the rulings in those cases. As previously stated, our jurisdiction is limited the this case; we cannot revisit rulings in the other cases. (See *Canal-Randolph Anaheim, Inc. v. J.E. Wilkowski, supra*, 103 Cal.App.3d at p. 288, fn. 3.)

The Bishops further claim that Phelps' actions have caused them "mental anguish and personal humiliation," as well as the costs of litigation. They claim Phelps acted maliciously. Therefore, they conclude, they are entitled to compensatory and punitive damages.

The Bishops did not sue Phelps or file a cross-complaint in this action seeking damages. They have no basis on which to claim damages. (See *Lackner v. North* (2006) 135 Cal.App.4th 1188, 1201-1202, fn. 5 ["the pleadings 'delimit the scope of the issues' to be determined"]; *Fibreboard Paper Products Corp. v. East Bay Union of Machinists* (1964) 227 Cal.App.2d 675, 708 [pleadings govern the issues involved in the litigation].)

**V. Relief Under Code of Civil Procedure Section 473
Based on Attorney Misconduct**

The Bishops assert they were entitled to relief under Code of Civil Procedure section 473 (section 473) based on their attorney's positive misconduct in failing to notify them of his motion to be relieved as counsel and failing to provide them with a copy of the discovery requests.

The Bishops never filed a motion for relief under section 473, so they cannot now claim that they were entitled to such relief. (*Cinnamon Square Shopping Center v. Meadowlark Enterprises, supra*, 24 Cal.App.4th at p. 1844; *In re Marriage of Olson, supra*, 14 Cal.App.4th at p. 15.)

Moreover, even if their motions to vacate the judgment could be deemed motions for relief under section 473, they did not appeal from the postjudgment order denying their motions. (See *Ryan v. Rosenfeld* (2017) 3 Cal.5th 124, 130.) Nor did they provide us with a copy of the trial court's ruling on their motions or a transcript of any hearing on the motion. (See *Jameson v. Desta, supra*, 5 Cal.5th at pp. 608-609.) We have no basis for reviewing the denial of the motions.

DISPOSITION

The judgment is affirmed. Plaintiffs to recover costs on appeal.
NOT TO BE PUBLISHED

JOHNSON, J.

We concur:

ROTHSCHILD, P. J.

WEINGART, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.